

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

BABY DOE, *et al.*,

Plaintiffs,

-v.-

JOSHUA MAST, *et al.*,

Defendants,

CIVIL NO: 3:22-cv-00049-NKM-JCH

DECLARATION OF RICHARD L. MAST

Pursuant to 28 U.S.C. § 1746, I, Richard L. Mast, declare as follows:

1. My name is Richard L. Mast. I am a defendant in the above-captioned litigation. I am an adult citizen of the United States and a resident of the Commonwealth of Virginia. I am a licensed attorney admitted in Virginia. I am competent to testify as to the matters herein, all of which are based upon my personal knowledge, information, and belief.

2. I have read the declaration of Liberty University CIO John M. Gauger.

3. I attended Liberty University for my undergraduate degree and was assigned the email address “rlmast@liberty.edu.” I have maintained this Liberty University email account, from 2005 to the present, using it for subsequent academic endeavors, as well as for matters involving legal research or representation.

4. I continued to use my rlmast@liberty.edu email address for school during my attendance at Liberty University School of Law from 2007-2010.

5. From at least 2008 to the present, I have known and understood that Liberty University’s email policy as practiced was to preserve confidentiality, privacy, and privileges relating to legal representation, including attorney-client privilege and attorney work-product

doctrine.

6. During law school, I used my rlmast@liberty.edu email address while working as a law clerk on various research projects, including matters under the supervision of licensed attorneys who were providing pro-bono and other representation of clients. At all times, I expected that such communications were and would remain confidential.

7. After law school, I worked briefly in private practice before being hired by Liberty Counsel in 2011. The vast majority of my professional practice since 2011 has been for clients whom I have represented without charge to the client – whether in my professional capacity, for Liberty Counsel; or for clients whom I have represented in my personal capacity at no charge.

8. At Liberty Counsel, I was assigned the email addresses richard@lc.org and rmast@lc.org. I continued using my rlmast@liberty.edu email address for certain attorney-client communications and attorney work products.

9. I regularly collaborate on pro bono or public interest matters with members of the Liberty University School of Law faculty using their Liberty.edu email addresses, including faculty supervising Liberty University's Constitutional Litigation Clinic and Clinic students; all of whom use their Liberty.edu email addresses.

10. I have supervised numerous law school students as law clerks, interns, and/or externs. Some have served for academic credit (with attendant reporting requirements and collaboration with their law school staff); others without academic credit. Some of these students have continued under my supervision during their law school semester; and I currently supervise one such student. The vast majority of Liberty University students with whom I have worked have used their Liberty.edu email addresses in their work with me, on the expectation that such email addresses were subject to attorney-client privilege and work-product doctrine.

11. Beginning in October 2019, I became aware of the plight of a seriously wounded

infant child of persons whom the U.S. Government assessed to be foreign terrorists who had fought to the death in direct combat with American special forces in Afghanistan.

12. Beginning in October 2019, as legal counsel to Joshua Mast, I legally advocated to government officials concerning the minor child who is now at issue in current litigation, discussing with other attorneys goals and strategies for advocacy to government officials; requesting and providing updates on the status of government official action concerning same; including engaging in advocacy and petitioning government for action on behalf of the asserted interests.

13. Beginning in October 2019, I also began representing Joshua and Stephanie Mast in their personal capacity efforts to provide care for and assure the safety of the seriously injured baby (who is now a vibrant young girl) and now the subject of this litigation.

14. I represented Joshua and Stephanie Mast in the Fluvanna County Juvenile and Domestic Relations (“JDR”) matter in November 2019; in the Fluvanna County Circuit Court Matter from November 2019 through December 2020; and in the Western District of Virginia matter filed February 26, 2020 (Notice of Voluntary Dismissal filed March 11, 2020; dismissed without prejudice July 20, 2020).

15. Thus, during the relevant time periods, in various capacities, I legally and quite appropriately advocated to government officials and in various fora to protect the child who is now subject to this litigation; on behalf of the child herself; and on behalf of Joshua and Stephanie Mast in their efforts to protect the child, whose best interests many people sought to protect.

16. I represented Joshua and Stephanie Mast for the periods represented in various privilege logs; communications from which are being requested by Plaintiffs via a subpoena duces tecum to Liberty University. Plaintiffs are seeking communications from Liberty University, which include those listed in my privilege log in this litigation; communications listed in Liberty Counsel’s privilege log; and communications which are privileged communications in parallel Virginia matters.

17. At all times while using the Liberty University email system—receiving through the Liberty University email system or sending emails to the Liberty University system—Liberty University had a standard policy and practice (and I was fully aware of such policy and practice) to preserve the privacy, confidentiality, and privilege of attorney client and work product communications.

18. For the limited purpose of this declaration, and without waiving attorney client privilege, and upon information and belief, my clients, Joshua and Stephanie Mast, intended that the communications and documents listed on my privilege logs (as well as that privilege log recently submitted by Liberty Counsel) were confidential and would be considered privileged attorney-client communications.

19. Emails sought by the subpoenas submitted to Liberty University by John and Jane Doe would capture communications with Joshua Mast and Stephanie Mast, as included in Request No. 1., notwithstanding those emails' presence on privilege logs.

20. As indicated in Request No. 2, to the extent I am included in communications between Joshua Mast and Stephanie Mast, Request No. 2 requesting communications between Joshua and Stephanie would also capture emails in which I was included as counsel.

21. The documents identified as attorney-client communications on the extant privilege logs provided to Plaintiffs and which are, inter alia, the subject of the current motion, were either communicated to me (and/or other associated attorneys) by my clients in confidence as part of my legal representation of them or communicated by me to my clients in confidence as part of my legal representation of them.

22. The documents identified as attorney work product on the extant privilege logs provided to Plaintiffs and which are, inter alia, the subject of the current motion, were prepared by me or other counsel or legal personnel working in association with me, in anticipation of litigation

or for the purpose of pending litigation.

23. I continue to represent Joshua and Stephanie Mast in the state court suits filed by Plaintiffs John Doe and Jane Doe, beginning with the first suit the Does filed in Virginia Circuit Court in December 2021 (which was dismissed); their second filed in the same court in March 2022 (which is ongoing but stayed and which is now before the Court of Appeals of Virginia); their third filed in Fluvanna JDR Court in August 2022 (which was dismissed and not appealed); their fourth filed in Fluvanna JDR Court in June 2023; and the Doe's *de novo* appeal of an order of the Fluvanna JDR Court to Fluvanna Circuit Court heard February 23, 2024.

I declare (or certify, verify, or state) under the penalty of perjury that the foregoing is true and correct.

Executed on the 25th day of February 2024.



Richard L. Mast